

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Universal Service Contribution Methodology)	WC Docket No. 06-122
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51

**REPLY COMMENTS OF
THE WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION**

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Summary

The Wireless Internet Service Providers Association (“WISPA”) renews its opposition to the Commission’s proposal to require standalone fixed broadband providers to contribute to the Universal Service Fund (“USF”). While commenters offer claims of dubious legal authority and purported policy benefits for such a proposal, what remains is that standalone providers are, at present, legally prohibited from receiving any USF subsidies and the proposal could require such providers to subsidize direct broadband competitors.

The Commission lacks clear authority under the Communications Act of 1934, as amended (the “Act”) to mandate contributions from standalone broadband providers, despite the claims of “clear” or “ample” authority submitted by some commenters. As providers of “information services,” fixed wireless Internet service providers (“WISPs”) are not “telecommunications carriers” and therefore are not subject to the Act’s mandatory contribution requirements. Likewise, the Commission lacks “permissive” authority to require USF contributions from broadband service providers. These “information services providers” are not “any other provider[s] of telecommunications” for Section 254 purposes -- they do not interconnect with the PSTN and do not provide voice services via a substitute technology.

Section 254 of the Act “is grounded on the principle that the contributions system should be fair for contributors,” yet many providers seek a contrary result by requiring small fixed wireless broadband providers to help subsidize larger telecommunications carriers. Moreover, the Commission should reject any of the overbroad claims that it has statutory authority to require such contributions from standalone broadband providers. A limiting principle must apply to avoid the many definitional problems cited by Level 3, AT&T, Google and other commenters in this proceeding. Whether a provider “benefits” from or “uses” a network is no

basis for mandating contributions, and Commission line-drawing in excess of its statutory authority should be rejected.

Even if *arguendo* such statutory authority exists, it would be premature for the Commission to expand contribution obligations to broadband providers given the unsettled nature of many of the new rules. In addition, the Commission should adopt two exemptions. *First*, revenues subject to USF contribution requirements should categorically exclude any revenues derived from broadband service to customers located in areas where other broadband providers are eligible for Connect America Fund support. Standalone broadband providers should not be required to indirectly subsidize their competitors in an area where the competitor receives CAF subsidies. *Second*, revenues subject to USF contribution requirements should be limited to only those revenues attributable to the interstate, “telecommunications” portion of the broadband Internet access service, not to the broadband service as a whole.

Absent adoption of these exemptions, the Commission should raise the threshold for the *de minimis* exception to account for the increased administrative burdens that small broadband providers would be forced to incur in order to help subsidize larger telecommunications carriers. Specifically, the Commission should exclude providers with annual receipts from broadband services of less than \$7 million, the small business definition favored by the Small Business Administration. The Commission also should not disrupt a provider’s flexibility to recover USF contributions directly from broadband customers where attributable to the amount of the broadband provider’s contribution obligation.

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The Wireless Internet Service Providers Association (“WISPA”), pursuant to Section 1.415 of the Commission’s Rules, submits these Reply Comments in response to certain of the issues presented in the Further Notice of Proposed Rulemaking (“*FNPRM*”) in this proceeding.¹ WISPA urges the Commission to reject or sharply limit proposals that would require unsubsidized broadband providers to contribute to the Universal Service Fund (“USF”). To the extent that the Commission has statutory authority to require contributions from “information service” providers that are ineligible for USF subsidies, the public interest does not support expansion of the contribution base to include standalone broadband providers. Requiring such broadband providers to pay into USF would contravene the public interest by discouraging broadband adoption, to the detriment of consumers in rural and underserved areas who are the intended beneficiaries of the Connect America Fund (“CAF”) program. In addition, adoption of a contribution requirement would undermine statutory requirements of competitive neutrality and fairness as well as the objectives of this proceeding because standalone broadband providers would be required to fund their competitors via the vehicle of “universal service.” Accordingly,

¹ *Universal Service Contribution Methodology; A National Broadband Plan for Our Future*, Further Notice of Proposed Rulemaking, Docket Nos. 06-122 & 09-51, FCC 12-46 (rel. Apr. 30, 2012) (“*FNPRM*”).

WISPA urges the Commission to reject these proposals or, alternatively, to take no action at this time that would require standalone broadband providers to contribute to USF.

Introduction

The Communications Act of 1934, as amended (the “Act”), obligates the Commission to promote the deployment of information services such as broadband.² In this proceeding, the Commission has articulated an “overarching goal of ensuring the delivery of affordable communications to all Americans.”³ An unacceptably large number of Americans⁴ have little or no access to broadband services in the face of economic barriers, distorted markets and unbalanced competition. For these reasons, the Commission has initiated a process to reform USF so that it can be used to promote broadband availability in underserved locations. WISPA agrees that certain reforms are necessary to meet the goals of advancing broadband ubiquity and promoting the “efficiency, fairness and sustainability” of the universal service program.⁵

Unsurprisingly, interested parties offer strikingly different views on what constitute USF “reforms.” On one hand, price cap carriers, which historically have been subsidized with billions of dollars, desire a system that keeps federal subsidies flowing, with an increased contribution base. On the other hand, Internet service providers that deliver standalone broadband services believe that they should not contribute to a system that supports inefficient wireline carriers while they themselves provide broadband service without any federal subsidies. Neither fairness nor efficiency are advanced if the Commission were to decide that standalone broadband

² Section 254(b)(3) of the Act, 47 U.S.C. §254(b)(3), states that: “Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications *and information services*, including interexchange services and advanced telecommunications *and information services*, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.” (Emphases added.)

³ *FNPRM* at ¶ 26.

⁴ The Commission estimates that 18 million Americans lack access to robust fixed broadband networks. *See Connect America Fund*, Docket Nos. 10-90, *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) at ¶ 4.

⁵ *See FNPRM* at ¶¶ 23-25.

providers should be *required* to contribute to universal service but should remain *ineligible* from qualifying to receive universal service subsidies.

For these reasons, WISPA urges the Commission to either (1) reject this proposal outright for now, (2) limit those broadband providers that would be required to contribute or the services that would be subject to contribution, or (3) as others have advocated, delay adoption of any rules that would require broadband providers to contribute to USF until the Commission finalizes the rules governing how USF funds will be disbursed. To WISPA, a universal service program designed to spur broadband deployments in rural and underserved areas is neither fair nor sustainable if the Commission mandates CAF contributions from standalone broadband providers while simultaneously categorically denying such providers the ability to qualify for such funds.

Discussion

I. THE COMMISSION SHOULD REJECT CALLS FOR USF ASSESSMENTS AGAINST STANDALONE BROADBAND INTERNET ACCESS PROVIDERS.

A. The Commission Lacks Clear Authority To Mandate Contributions From Standalone Broadband Providers.

In its Comments, WISPA demonstrated that the Commission lacks authority to impose contribution burdens on broadband providers.⁶ Section 254(c)(1) of the Act⁷ mandates USF contributions from “every telecommunications carrier”⁸ and permits the Commission to require

⁶ Comments of the Wireless Internet Service Providers Association (“WISPA Comments”), Docket No. 06-122 and 09-51, filed July 9, 2012 at 4-9.

⁷ The Act provides that “[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service. . . . Any other provider of interstate telecommunications may be required to contribute to the preservation and advancement of universal service if the public interest so requires.” 47 U.S.C. §254(d).

⁸ The Act defines “telecommunications carrier” as “any provider of telecommunications services, except that such term does not include aggregators of telecommunications services.” 47 U.S.C. §153(51). “Telecommunications service” is defined as “the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.” 47 U.S.C. §153(53).

contributions from “any other provider of interstate telecommunications ... if the public interest so requires.” However, under prevailing Commission precedent,⁹ wireless Internet service providers (“WISPs”) are not “telecommunications carriers,” but rather are providers of “information services” with a telecommunications component.¹⁰ As Level 3 observes, the Commission has previously recognized that the Act “does not require providers of information services to contribute to universal service,” and the mere fact that an information services provider “also provides transmission to end users” does not trigger a contribution requirement.¹¹ Google similarly notes that “the expansive nature of the FNPRM’s proposals to broaden the contribution base raises a real risk that the FCC could exceed its legal authority in the inevitable line-drawing exercises that would be required to pursue” incremental reforms to USF.¹² As discussed more fully in its Comments, WISPA agrees that there are serious questions regarding the Commission’s legal authority.

Nevertheless, some commenters claim that the Commission has “clear” or “ample” authority to mandate CAF contributions from broadband service providers.¹³ Some assert that

“Telecommunications,” in turn, refers to “the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.” 47 U.S.C. §153 (50).

⁹ In 2007, the Commission determined that wireless broadband access services are “information services” with a “telecommunications” component, but expressly are not “telecommunications services” or “cable services.” *See Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, Declaratory Ruling, WT Docket No. 07-53 (rel. Mar. 23, 2007), at 19-34.

¹⁰ An “information service” is defined as “the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.” 47 U.S.C. §153 (24).

¹¹ *See* Comments of Level 3 Communications, LLC (“Level 3”), Docket Nos. 06-122 and 09-51, filed July 9, 2012, at 8.

¹² Comments of Google Inc. (“Google”), Docket Nos. 06-122 and 09-51, filed July 9, 2012, at 12.

¹³ *See, e.g.,* Comments of the National Telecommunications Cooperative Association, The Organization for the Promotion and Advancement of Small Telecommunications Companies, and the Western Telecommunications Alliance, (“NTCA/OPASTC/WTCA Comments”), Docket Nos. 06-122 and 09-51, filed July 9, 2012 at 2-8; Comments of MetroPCS Communications, Inc., Docket Nos. 06-122 and 09-51, filed July 9, 2012, at 11-15; Comments of Google at 8 (Commission’s “permissive authority is more than ample to include contributions from broadband connections...”).

the Commission's permissive authority over "interconnected VoIP" is a basis for the Commission to find that it also has sufficient permissive authority to require standalone broadband providers to contribute to CAF.¹⁴ As WISPA has explained,¹⁵ this conclusion does not follow. The Commission determined¹⁶ that interconnected VoIP service providers constituted "any other provider of telecommunications" for purposes of Section 254(d) in part because such services interconnect with the Public Switched Telephone Network ("PSTN").¹⁷ While the Commission therefore deemed interconnected VoIP to be a substitute for traditional, and traditionally regulated, voice services, that predicate does not apply to standalone broadband services, even if such services sometimes also include the provision of VoIP. By clear precedent, broadband Internet access services are functionally integrated and bundled "information services" that do not rely on interconnection to the PSTN. To conflate interconnected VoIP with broadband service would be to eviscerate statutory distinctions between telecommunications services and information services; categories that the Commission has determined are "mutually exclusive."¹⁸

Moreover, even if WISPs are deemed providers of interstate telecommunications, the public interest does not *require* contributions by standalone broadband providers. To the contrary, Section 254(d) requires telecommunications carriers to contribute on an equitable and

¹⁴ See, e.g., NTCA/OPASTC/WTB Comments at 15-17.

¹⁵ WISPA Comments at 6-7.

¹⁶ See *Universal Service Contribution Methodology*, 21 FCC Rcd 7518 (2006), *aff'd Vonage Holdings Corp. v. FCC*, 489 F.3d 1232 (D.C. Cir. 2007).

¹⁷ See Comments of XO Communications Services, LLC ("XO Communications"), Docket Nos. 06-122 and 09-51, filed July 9, 2012, at 15-16 (noting that the Commission has used its permissive authority to require other providers of interstate telecommunications to contribute to universal service support whenever it is determined that the providers benefit from access to the PSTN).

¹⁸ The Commission has determined that Congress intended for "telecommunications services" and "information services" to represent mutually exclusive categories. *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report to Congress, 13 FCC Rcd 11501 (1998) at ¶13.

nondiscriminatory basis.¹⁹ As described below, requiring USF contributions from standalone WISPs would directly contravene this statutory requirement. For these reasons, the Commission’s authority to compel standalone broadband providers to contribute to USF is far from “clear” or “ample,” and the public interest considerations counsel against assertions of Commission jurisdiction at this time.

B. Expanding The Contribution Base To Include Standalone Broadband Providers Would Be Contrary To The Public Interest.

Separate from the question of the Commission’s legal authority, some commenters support expanding CAF contribution obligations to include providers of broadband Internet access services.²⁰ Some argue that the contribution base should be expanded because the Commission should not subsidize voice and broadband Internet access services without requiring contributions from broadband providers. However, such overbroad proposals, if applied to standalone WISPs, would undermine the Commission’s goals of efficiency, fairness and sustainability — goals that the Commission has advanced precisely because they are in the public interest.

¹⁹ While the statute is silent with regard to the application of these principles to contributors that are not themselves telecommunications carriers, it strains credulity to suggest that the public interest would allow the Commission to permit inequitable, discriminatory policies with respect to providers within the Commission’s permissive authority under Section 254. *See, e.g.*, Comments of Sprint Nextel Corporation (“Sprint Nextel”), Docket Nos. 06-122 and 09-51, filed July 9, 2012, at 6, n.12.

²⁰ *See, e.g.* Comments of the Rural Telecommunications Group (“RTG”), Docket Nos. 06-122 and 09-51, filed July 9, 2012, at 11; Comments of Alexicon Telecommunications Consulting, Docket Nos. 06-122 and 09-51, filed July 9, 2012, at 3-4; Comments of AARP, Docket Nos. 06-122 and 09-51, filed July 9, 2012, at 25-29; Comments of COMPTTEL, Docket Nos. 06-122 and 09-51, filed July 9, 2012, at 14-17; Comments of XO Communications at 28-31; Comments of United States Cellular Corporation (“US Cellular”), Docket Nos. 06-122 and 09-51, filed July 9, 2012, at 21-29; Comments of the Ad Hoc Telecommunications Users Committee, Docket Nos. 06-122 and 09-51, filed July 9, 2012, at 38-40; ; Comments of Earthlink, Integra, and TW Telecom (collectively, “Earthlink”), Docket Nos. 06-122 and 09-51, filed July 9, 2012, at 8-9.

Section 254(d) “is grounded on the principle that the contributions system should be fair for contributors.”²¹ Nevertheless, some commenters would reject this principle of competitive neutrality by insisting that all standalone broadband services should contribute to universal service. For example, US Cellular “favors assessing all forms of broadband.”²² COMPTTEL argues that the Commission should “compel all providers that incorporate telecommunications into their finished products to contribute to the universal service fund, whether their finished products are provided via circuit-switched, packet-switched or some other transmission technology, and whether or not the Commission has classified their finished products as telecommunications services or information services.”²³ The Rural Telecommunications Group urges the Commission to expand the contribution base to “ensure that those that profit from broadband services will also contribute to the build out of broadband services in high-cost areas and support those who rely on lifeline support for a broadband connection.”²⁴

The result of such a rule change, of course, would be that standalone broadband providers, which do not offer voice or telecommunications services and currently are prohibited from obtaining USF funds, would subsidize competing CAF-eligible services.²⁵ US Cellular “favors a policy that provides, to the extent that the Commission makes USF funding available to support broadband services, those broadband services also should be subject to a contribution requirement.”²⁶ XO Communications states that it is “nonsensical to deploy scarce universal service funds to subsidize expansion of broadband Internet access services while simultaneously

²¹ *FNPRM* at ¶24, citing 47 U.S.C. §254(d) (requiring telecommunications carriers to contribute on an equitable and non-discriminatory basis).

²² Comments of US Cellular at 22.

²³ Comments of COMPTTEL at 6.

²⁴ Comments of RTG at 11 (stating that FCC should fund CAF through contributions “from all beneficiaries of a ubiquitous national broadband network.”).

²⁵ WISPA previously objected to this approach. *See* Petition for Partial Reconsideration of the Wireless Internet Service Providers Association, WC Docket No. 10-90, *et al.*, at 4-8. *See also* Comments of ZipDX, LLC, Docket Nos. 06-122 and 09-51, filed July 9, 2012 (arguing that companies that are not eligible for USF should not be required to contribute).

²⁶ Comments of US Cellular at 22.

giving the providers of broadband universal Internet access services a ‘free pass’ on contributing any financial support to the universal service program.”²⁷ Presumably both US Cellular and XO would agree that the reverse is true: the fact that USF funds are not available to standalone broadband providers should mean that those providers are not subject to a contribution requirement. To find otherwise would again undermine competitive neutrality and the goals of Section 254.

Another recurring theme from some commenters is that broadband service providers benefit from the use or availability of “telecommunications” and networks and therefore should be required to contribute to the subsidization of telecommunications providers. Some limiting principle must apply to this line of argument. WISPA believes that Section 254’s underpinnings of competitive neutrality and fairness sharply limit the Commission’s authority to require CAF contributions based solely on whether *any* person or provider benefits from or uses a network.²⁸ To find otherwise would raise the specter of the definitional problems that Level 3 describes, where providers such as Lexis/Nexis, Westlaw, online video distributors, content-distribution network (“CDN”) providers and others conceivably could be brought into USF contribution obligations merely because there is a “transmission” component to their service.²⁹

Moreover, all else being equal, imposing a contribution requirement on standalone fixed broadband providers would raise their costs of providing services as well as the costs to potential subscribers. Google notes that many of the proposed reform modifications, “such as broadly requiring revenues-based contributions for all services with an interstate telecommunications component (perhaps even including all retail information service revenues) or expanding

²⁷ Comments of XO Communications at 30.

²⁸ *Accord*, Comments of Google at 12 (noting that the Act provides the Commission with “substantial but not unlimited authority to create a sustainable USF mechanism” and the “real risk” that the Commission could “exceed its legal authority” in line-drawing with respect to certain services).

²⁹ Comments of Level 3 at 9-10.

assessments to services never before deemed assessable, are likely to dampen investment and innovation.”³⁰ AT&T argues that the Commission’s proposed contribution rule would include services such as cloud computing, social networking, over-the-top services and interactive legal database services “because all of these services include the provision of telecommunications ‘to end users’ at some point in any given communication with them, albeit not over the last-mile links closest to them.”³¹ The Fiber-to-the-Home Council states that the Commission “should not impose USF contributions obligations on broadband Internet service at this time when broadband adoption is a primary driver of economic recovery and has slowed, especially among low-income consumers for whom any increase in price would severely hinder adoption.”³² WISPA agrees that a federal policy must not discourage broadband adoption and chill investment in facilities to serve some of the most problematic areas in the United States. Therefore, to the extent that the Commission has authority to require “information service” providers to contribute to USF, the Commission should reject on public interest grounds a broad expansion of contribution requirements to providers of standalone broadband services.

C. It Would Be Premature For The Commission To Expand Contribution Obligations To Broadband Providers At this Time.

Assuming *arguendo* the Commission can somehow establish its authority to require standalone broadband providers to contribute to CAF and that there are good policy reasons to do so, WISPA agrees with those commenters that state that it would be premature for the Commission to adopt such a requirement at this time.³³ Clearwire takes a position consistent

³⁰ Comments of Google at 12 (footnotes omitted).

³¹ Comments of AT&T at 6.

³² Comments of the Fiber-to-the-Home Council, Docket Nos. 06-122 and 09-51, filed July 9, 2012 at 2.

³³ See, e.g., Comments of Time Warner Cable, Docket Nos. 06-122 and 09-51, filed July 9, 2012, at 9-11; Comments of RCA—The Competitive Carriers Association, Docket Nos. 06-122 and 09-51, filed July 9, 2012, at 7-9; Comments of DISH Network L.L.C., EchoStar Technologies, L.L.C. and Hughes Network Systems, LLC, Docket

with WISPA in explaining that the “potential deleterious impact on broadband adoption when coupled with a mismatch between contribution and support argues for caution and delay in adding broadband Internet access services to the USF base in the near term.”³⁴ Also, the Commission still has not adopted “rules of the road” for several aspects of USF, including the Remote Areas Fund that may be a source of subsidies to WISPs and other broadband providers. It will be impossible for the Commission to properly calibrate the contribution base and the areas needed for CAF support absent predictable operating rules for those services. Even more significantly, in light of the pending appeals of the Commission’s rules in this proceeding, expanding the contribution base prior to finalization of those rules could be ineffective. For these reasons, even if the Commission finds that it has the authority to extend USF contribution obligations to standalone broadband and that the public interest requires it to do so, the Commission should move cautiously and deliberately in deciding not just whether, but when to implement such rule changes.

II. IF THE COMMISSION REQUIRES USF CONTRIBUTIONS FROM STANDALONE BROADBAND INTERNET ACCESS PROVIDERS, CERTAIN EXEMPTIONS SHOULD APPLY.

WISPA renews its call for the Commission to adopt specific exemptions designed to promote fairness, to mitigate artificial competitive disadvantages for WISPs and to stimulate broadband investment in key areas. These exemptions would apply to providers of standalone broadband Internet access service to the extent such providers otherwise would be required to contribute to CAF and the Commission does not adopt WISPA’s proposed definitional change to “unsubsidized competitor.”

Nos. 06-122 and 09-51, filed July 9, 2012, at 6-7; Comments of Clearwire Corporation, Docket Nos. 06-122 and 09-51, filed July 9, 2012 at 3-5; Comments of Verizon, Docket Nos. 06-122 and 09-51, filed July 9, 2012 at 41-43.

³⁴ Comments of Clearwire at 4-5.

- *First*, revenues subject to contribution should categorically exclude any revenues derived from broadband service to customers located in areas where another service provider is eligible for CAF support.³⁵
- *Second*, revenues subject to contribution should include only those revenues attributable to the interstate, “telecommunications” portion of the broadband Internet access service, where such service may be provided, not to the broadband service as a whole.

Simply put, a broadly overinclusive contribution obligation will chill investment in exactly the type of broadband facilities that are well situated to bring broadband to rural and underserved areas. By adopting these exemptions and limitations, the Commission can help ensure that the contribution obligation is narrowly tailored to benefit the broader policy goals of advancing the delivery of broadband services to all Americans.

III. THE *DE MINIMIS* EXCEPTION SHOULD BE EXPANDED.

The Commission should raise the proposed \$50,000 threshold for the *de minimis* exception, at least as applied to standalone broadband operators, to avoid unduly straining the revenues and market opportunities for companies already providing broadband service in those rural and/or underserved areas. While COMPTTEL and others support the Commission’s proposed modification,³⁶ several commenters seek reform of the *de minimis* exception to the contribution requirements. For example, the American Cable Association asks the Commission to determine the *de minimis* threshold based on a provider’s assessable revenues and to increase the threshold to at least \$200,000 in annual assessable revenues.³⁷ The Critical Messaging Association finds that the *FNPRM*’s suggested threshold is “grossly low” and that the exemption “should be raised to at least \$1,250,000 of annual assessable interstate-international revenues.”³⁸

³⁵ These exemptions should be self-executing and should apply without further action by the Commission or by the Universal Service Administrative Company.

³⁶ *See, e.g.*, COMPTTEL Comments at 31.

³⁷ Comments of the American Cable Association, Docket Nos. 06-122 and 09-51, filed July 9, 2012, at 5-7.

³⁸ Comments of the Critical Messaging Association, Docket Nos. 06-122 and 09-51, filed July 9, 2012, at 3.

In its Comments, WISPA noted the administrative burdens to small unsubsidized broadband companies for compliance with the new rules and the competitive disadvantages associated with competing with larger subsidized operators. Absent the rule changes advocated by WISPA, the Commission should not require broadband providers to contribute if their annual receipts from broadband services are less than \$7 million.

IV. COMMENTERS AGREE THAT THE COMMISSION SHOULD NOT LIMIT A PROVIDER'S FLEXIBILITY TO RECOVER USF CONTRIBUTIONS DIRECTLY FROM ITS BROADBAND CUSTOMERS.

In Comments, WISPA urged the Commission to “reject any proposal that would compel standalone broadband service providers to absorb all or part of the contributions and the associated administrative burdens. Instead, such providers should retain the flexibility, in a competitive marketplace, to determine whether or not to pass these costs on to consumers and if so, to what extent.”³⁹ Not surprisingly, the record shows that many commenters agree that the Commission should not dictate the provider/customer relationship in this way.⁴⁰

Requiring WISPs to absorb these costs would harm broadband deployment and availability in rural and underserved areas by chilling investment. Pass-throughs spread the burden of reallocating funds for subsidy programs. To prevent pass-throughs, particularly as contribution factors have kept increasing over recent years, would be directly contrary to the Commission's goals to stimulate broadband deployment.

³⁹ WISPA Comments at 13.

⁴⁰ *See, e.g.*, Comments of US Cellular at 49-51; Comments of T-Mobile, Inc., Docket Nos. 06-122 and 09-51, filed July 9, 2012, at 12; Comments of Level 3 at 25; *but see* Comments of the National Association of State Utility Consumer Advocates on the USF Contribution Mechanism, Docket Nos. 06-122 and 09-51, filed July 9, 2012, at 22-23.

Conclusion

WISPA respectfully requests that the Commission adopt the proposals described in these Reply Comments.

Respectfully submitted,

August 6, 2012

**WIRELESS INTERNET SERVICE
PROVIDERS ASSOCIATION**

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